

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SHERMAN EMMANUEL BROWN,

Plaintiff,

-against-

RITA FLYNN, CATHY GRAHAM, DAVE  
BUSH, and GAYLE WALTHAUL,

Defendants.  
-----X

07 Civ. 9789 (RJH) (THK)

ORDER

(PRO SE)

THEODORE H. KATZ, UNITED STATES MAGISTRATE JUDGE.

This action has been referred to this Court for general pretrial supervision. On September 8, 2008, the parties discussed the claims and defenses in this case, as well as scheduling of pretrial discovery, during a telephone conference with the Court.

Plaintiff did not timely file his proposed Second Amended Complaint (the "S.A.C."). Defendants object to granting leave to file the S.A.C. to the extent that adjudication of new claims asserted therein may implicate the validity of Plaintiff's ongoing parole revocation hearing, in violation of the abstention doctrine set forth in Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746 (1971). Upon review, the Court perceives that, in addition to Plaintiff's discrimination claim, the S.A.C. further alleges a retaliation claim under the Americans with Disabilities Act. Specifically, Plaintiff claims that Defendant Rita Flynn ("Flynn") retaliated against Plaintiff for complaining of discrimination and bringing this lawsuit by selectively enforcing the condition of Plaintiff's

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parole that he not fraternize with other parolees. (See S.A.C. ¶¶ 47-49.) Plaintiff alleges that he was "singled out" for fraternizing with an individual named Sam Gittens ("Gittens"). (See id. ¶ 48.) Flynn arrested Plaintiff and charged him with fraternization, but did not arrest or charge Gittens, according to the S.A.C. (See id. ¶¶ 47-49.)

The Court may safely address the merits of Plaintiff's retaliation claim, and the rest of the claims in the First Amended Complaint, without interfering with the ongoing parole revocation procedures. Accordingly, it is ORDERED that:

1. The First Amended Complaint is deemed to be amended to include the allegation that Plaintiff was selectively prosecuted for fraternizing with another parolee in retaliation for complaining of discrimination and bringing this action.

2. Defendants shall respond to that allegation by either admitting or denying it by September 24, 2008.

3. The parties shall complete all discovery by February 13, 2009.

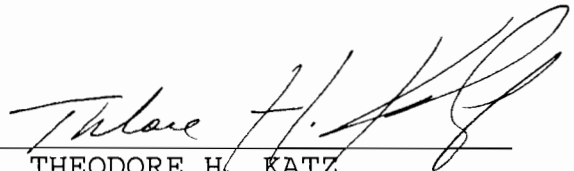
4. There shall be no further amendment of pleadings or joinder of additional parties without good cause shown.

5. Dispositive motions, including any motion for summary judgment, shall be filed by March 16, 2009.

6. Any response in opposition shall be filed by April 15, 2009.

7. Any reply shall be filed by April 29, 2009.

SO ORDERED.

  
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THEODORE H. KATZ  
UNITED STATES MAGISTRATE JUDGE

Dated: September 9, 2008  
New York, New York

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